

AMENDED IN ASSEMBLY APRIL 24, 2003

AMENDED IN ASSEMBLY APRIL 1, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 669

Introduced by Assembly Member Cohn

February 19, 2003

An act to amend Sections 14837, 14839, 14842, and 14842.5 of, and to repeal Section 14838.6 of, the Government Code, and to amend Sections 999, 999.6, and 999.9 of the Military and Veterans Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 669, as amended, Cohn. Public contracts: disabled veteran business enterprises.

Existing law provides that in state contracts for construction, the procurement of goods, information technology, or the delivery of services, small businesses, as defined, shall receive a 5% bid preference. Existing law also requires state agencies and all other state entities contracting for materials, supplies, equipment, alteration, repair, or improvement to have at least 3% participation goals for disabled veteran business enterprises.

This bill would require small businesses and disabled veteran business enterprises, as defined, to perform commercially useful functions, as defined, in relation to any contract those businesses are awarded under those provisions. This bill would also revise the definition of disabled veteran to require that the veteran have at least a 10% service-connected disability *and be domiciled in California*.

Existing law subjects to certain penalties a business that obtained classification as a small business or microbusiness by reason of having furnished incorrect supporting information or withholding relevant information. Existing law also imposes civil penalties upon a person who, among other activities, fraudulently attempts to become certified as a disabled veteran business enterprise or as a small business or microbusiness.

This bill would impose civil penalties against any person that knowingly and fraudulently represents that a commercially useful function is being performed by a disabled veteran business enterprise, a small business, or a microbusiness in order to obtain or retain a state contract. This bill would also impose civil penalties on any person that knowingly and fraudulently represents the participation of disabled veteran business enterprises, certified small businesses, or microbusinesses, in order to obtain or retain a state contract. In addition, this bill would create new penalties that would apply to the existing offenses and to these new offenses.

Existing law establishes within the Department of General Services the Office of Small Business Certification and Resources, which is responsible for assisting small businesses and microbusinesses in obtaining state contracts, as provided.

This bill would rename that office as the Office of Small Business and Disabled Veteran Business Enterprise Services, which would be responsible for assisting small businesses, microbusinesses, and certified disabled veteran business enterprises in obtaining state contracts. This bill would also make related conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 14837 of the Government Code is
- 2 amended to read:
- 3 14837. As used in this chapter:
- 4 (a) "Department" means the Department of General Services.
- 5 (b) "Director" means the Director of General Services.
- 6 (c) "Manufacturer" means a business that is both of the
- 7 following:



1 (1) Primarily engaged in the chemical or mechanical
2 transformation of raw materials or processed substances into new
3 products.

4 (2) Classified between Codes 2000 to 3999, inclusive, of the
5 Standard Industrial Classification (SIC) Manual published by the
6 United States Office of Management and Budget, 1987 edition.

7 (d) (1) “Small business” means an independently owned and
8 operated ~~business, which~~ *business that* is not dominant in its field
9 of operation, the principal office of which is located in California,
10 the officers of which are domiciled in California, and ~~which that~~,
11 together with affiliates, has 100 or fewer employees, and average
12 annual gross receipts of ten million dollars (\$10,000,000) or less
13 over the previous three years, or is a manufacturer, as defined in
14 subdivision (c), with 100 or fewer employees.

15 (2) “Microbusiness” is a small business that, together with
16 affiliates, has average annual gross receipts of two million five
17 hundred thousand dollars (\$2,500,000) or less over the previous
18 three years, or is a manufacturer, as defined in subdivision (c), with
19 25 or fewer employees.

20 (3) The director shall conduct a biennial review of the average
21 annual gross receipt levels specified in this subdivision and may
22 adjust that level to reflect changes in the California Consumer
23 Price Index for all items. To reflect unique variations or
24 characteristics of different industries, the director may establish,
25 to the extent necessary, either higher or lower qualifying standards
26 than those specified in this subdivision, or alternative standards
27 based on other applicable criteria.

28 (4) Standards applied under this subdivision shall be
29 established by regulation, in accordance with Chapter 3.5
30 (commencing with Section 11340) of Part 1 of Division 3 of Title
31 2, and shall preclude the qualification of businesses that are
32 dominant in their industry. In addition, the standards shall provide
33 that the certified small business or microbusiness shall provide
34 goods or services that contribute to the fulfillment of the contract
35 requirements by performing a commercially useful function, as
36 defined below:

37 (A) A certified small business or microbusiness is deemed to
38 perform a commercially useful function if the business does all of
39 the following:

1 (i) (I) Is responsible for the execution of a distinct element of
2 the work of the contract.

3 (II) Carries out its obligation by actually performing,
4 managing, or supervising the work involved.

5 (III) Performs work that is normal for its business services and
6 functions.

7 (ii) Is not further subcontracting a portion of the work that is
8 greater than that expected to be subcontracted by normal industry
9 practices.

10 (B) A contractor, subcontractor, or supplier will not be
11 considered to perform a commercially useful function if the
12 contractor's, subcontractor's, or supplier's role is limited to that of
13 an extra participant in a transaction, contract, or project through
14 which funds are passed in order to obtain the appearance of small
15 business or microbusiness participation.

16 (e) "Disabled veteran business enterprise" means an enterprise
17 that has been certified as meeting the qualifications established by
18 subdivision (g) of Section 999 of the Military and Veterans Code.

19 SEC. 2. Section 14838.6 of the Government Code is repealed.

20 SEC. 3. Section 14839 of the Government Code is amended
21 to read:

22 14839. There is hereby established within the department the
23 Office of Small Business and Disabled Veteran Business
24 Enterprise Services. The duties of the office shall include:

25 (a) Compiling and maintaining a comprehensive bidders list of
26 qualified small businesses and disabled veteran business
27 enterprises, and noting which small businesses also qualify as
28 microbusinesses.

29 (b) Coordinating with the Federal Small Business
30 Administration, the Minority Business Development Agency, and
31 the Office of Small Business Development of the Department of
32 Economic and Business Development.

33 (c) Providing technical and managerial aids to small
34 businesses, microbusinesses, and disabled veteran business
35 enterprises, by conducting workshops on matters in connection
36 with government procurement and contracting.

37 (d) Assisting small businesses, microbusinesses, and disabled
38 veteran business enterprises, in complying with the procedures for
39 bidding on state contracts.



1 (e) Working with appropriate state, federal, local, and private
2 organizations and business enterprises in disseminating
3 information on bidding procedures and opportunities available to
4 small businesses, microbusinesses, and disabled veteran business
5 enterprises.

6 (f) Making recommendations to the department and other state
7 agencies for simplification of specifications and terms in order to
8 increase the opportunities for small business, microbusiness, and
9 disabled veteran business enterprise participation.

10 (g) Develop, by regulation, other programs and practices that
11 are reasonably necessary to aid and protect the interest of small
12 businesses, microbusinesses, and disabled veteran business
13 enterprises in contracting with the state.

14 (h) The information furnished by each contractor requesting a
15 small business or microbusiness preference shall be under penalty
16 of perjury.

17 SEC. 4. Section 14842 of the Government Code is amended
18 to read:

19 14842. (a) A business that has obtained classification as a
20 small business or microbusiness by reason of having furnished
21 incorrect supporting information or by reason of having withheld
22 information, and ~~which~~ *that* knew, or should have known, the
23 information furnished was incorrect or the information withheld
24 was relevant to its request for classification, and ~~which~~ *that* by
25 reason of that classification has been awarded a contract to which
26 it would not otherwise have been entitled, shall do all of the
27 following:

28 (1) Pay to the state any difference between the contract amount
29 and what the state's costs would have been if the contract had been
30 properly awarded.

31 (2) In addition to the amount described in subdivision (a), be
32 assessed a penalty in an amount of not more than 10 percent of the
33 amount of the contract involved.

34 (3) Be ineligible to transact any business with the state either
35 directly as a prime contractor or indirectly as a subcontractor, for
36 a period of not less than three months and not more than 24 months.
37 State agencies may reject the bid of a supplier offering goods,
38 information technology, or services manufactured or provided by
39 a subcontractor if that subcontractor has been declared ineligible

1 to transact any business with the state under this chapter, even
2 though the bidder is a business in good standing.

3 (b) All payments to the state pursuant to paragraph (1) of
4 subdivision (a) shall be deposited in the fund out of which the
5 contract involved was awarded.

6 (c) All payments to the state pursuant to paragraph (2) of
7 subdivision (a) shall be deposited in the state General Fund.

8 (d) The small business certification of a business found to have
9 violated the provisions of subdivision (a) shall be revoked for a
10 ~~period of not less than one year, and the business shall be~~
11 ~~suspended from bidding on, or participating as either a contractor,~~
12 ~~subcontractor, or supplier in, any state contract or project for a~~
13 ~~period of not less than 30 days nor more than one year. For an~~
14 ~~period of not less than one year. For an~~ additional or subsequent
15 violation, the period of certification revocation or suspension shall
16 be extended for a period of up to three years. The revocation shall
17 apply to the principals of the business and any subsequent
18 businesses formed by those principals.

19 (e) Prior to the imposition of any sanctions under this article,
20 a business shall be entitled to a public hearing and to at least five
21 working days' notice of the time and place thereof. The notice
22 shall state the reasons for the hearing.

23 SEC. 5. Section 14842.5 of the Government Code is amended
24 to read:

25 14842.5. (a) It shall be unlawful for a person to do any of the
26 following:

27 (1) Knowingly and with intent to defraud, fraudulently obtain,
28 retain, attempt to obtain or retain, or aid another in fraudulently
29 obtaining or retaining or attempting to obtain or retain,
30 certification as a small business or microbusiness enterprise for the
31 purposes of this chapter.

32 (2) Willfully and knowingly make a false statement with the
33 intent to defraud, whether by affidavit, report, or other
34 representation, to a state official or employee for the purpose of
35 influencing the certification or denial of certification of any entity
36 as a small business or microbusiness enterprise.

37 (3) Willfully and knowingly obstruct, impede, or attempt to
38 obstruct or impede, any state official or employee who is
39 investigating the qualifications of a business entity that has

1 requested certification as a small business or microbusiness
2 enterprise.

3 (4) Knowingly and with intent to defraud, fraudulently obtain,
4 attempt to obtain, or aid another person in fraudulently obtaining
5 or attempting to obtain, public moneys to which the person is not
6 entitled under this chapter.

7 (5) Knowingly and with intent to defraud, fraudulently
8 represent certified small business or microbusiness participation
9 in order to obtain or retain a bid preference or a state contract.

10 (6) Knowingly and with intent to defraud, fraudulently
11 represent that a commercially useful function is being performed
12 by a certified small business or microbusiness in order to obtain or
13 retain a bid preference or a state contract.

14 (b) Any person who is found by the department to have violated
15 any of the provisions of subdivision (a) is subject to a civil penalty
16 of not more than five thousand dollars (\$5,000).

17 (c) Any person who violates subdivision (a) shall, if certified
18 as a small business or a microbusiness, have the business'
19 certification revoked for a period of not more than one year, and
20 shall, in addition to the penalties provided for in subdivision (b),
21 be suspended from bidding on, or participating as a contractor, a
22 subcontractor, or a supplier in, any state contract or project for a
23 ~~period of not less than 30 days nor more than one year. However,~~
24 ~~period of not less than three months nor more than 24 months.~~
25 *However,* for an additional or subsequent violation, the period of
26 certification revocation or suspension shall be extended for a
27 period of up to three years. The certification revocation shall apply
28 to the principals of the business and any subsequent businesses
29 formed by those principals. Any business or person who fails to
30 satisfy the penalties imposed pursuant to subdivisions (b) and (c)
31 shall be prohibited from further contracting with the state until the
32 penalties are satisfied.

33 (d) If a contractor, subcontractor, supplier, subsidiary, or
34 affiliate thereof, has been found by the department to have violated
35 subdivision (a) and that violation occurred within three years of
36 another violation of subdivision (a) found by the department, the
37 department shall prohibit that contractor, subcontractor, supplier,
38 subsidiary, or affiliate thereof, from entering into a state project or
39 state contract and from further bidding to a state entity, and from

1 being a subcontractor to a contractor for a state entity and from
2 being a supplier to a state entity.

3 SEC. 6. Section 999 of the Military and Veterans Code is
4 amended to read:

5 999. As used in this article, the following definitions apply:

6 (a) “Administering agency” means the Treasurer in the case of
7 contracts for professional bond services, and the Department of
8 General Services’ Office of Small Business and Disabled Veteran
9 Business Enterprise Services, in the case of contracts governed by
10 Section 999.2.

11 (b) “Awarding department” means any state agency,
12 department, governmental entity, or other officer or entity
13 empowered by law to issue bonds or enter into contracts on behalf
14 of the State of California.

15 (c) “Bonds” means bonds, notes, warrants, certificates of
16 participation, and other evidences of indebtedness issued by or on
17 behalf of the State of California.

18 (d) “Contract” includes any agreement or joint agreement to
19 provide professional bond services to the State of California or an
20 awarding department. “Contract” also includes any agreement or
21 joint development agreement to provide labor, services, material,
22 supplies, or equipment in the performance of a contract, franchise,
23 concession, or lease granted, let, or awarded for and on behalf of
24 the State of California.

25 (e) (1) “Contractor” means any person or persons, regardless
26 of race, color, creed, national origin, ancestry, sex, marital status,
27 disability, religious or political affiliation, or age, or any sole
28 proprietorship, firm, partnership, joint venture, corporation, or
29 combination thereof who submits a bid and enters into a contract
30 with a representative of a state agency, department, governmental
31 entity, or other officer empowered by law to enter into contracts
32 on behalf of the State of California. “Contractor” includes any
33 provider of professional bond services who enters into a contract
34 with an awarding department.

35 (2) “Disabled Veteran Business Enterprise contractor,
36 subcontractor, or supplier” means any person or entity that has
37 been certified by the administering agency pursuant to this article
38 and that performs a “commercially useful function,” as defined
39 below, in providing services or goods that contribute to the
40 fulfillment of the contract requirements:

1 (A) A person or an entity is deemed to perform a
2 “commercially useful function” if a person or entity does all of the
3 following:

4 (i) (I) Is responsible for the execution of a distinct element of
5 the work of the contract.

6 (II) Carries out the obligation by actually performing,
7 managing, or supervising the work involved.

8 (III) Performs work that is normal for its business services and
9 functions.

10 (ii) Is not further subcontracting a portion of the work that is
11 greater than that expected to be subcontracted by normal industry
12 practices.

13 (B) A contractor, subcontractor, or supplier will not be
14 considered to perform a commercially useful function if the
15 contractor’s, subcontractor’s, or supplier’s role is limited to that of
16 an extra participant in a transaction, contract, or project through
17 which funds are passed in order to obtain the appearance of
18 disabled veteran business enterprise participation.

19 (f) “Disabled veteran” means a veteran of the military, naval,
20 or air service of the United States, including, but not limited to, the
21 Philippine Commonwealth Army, the Regular Scouts (“Old
22 Scouts”), and the Special Philippine Scouts (“New Scouts”), who
23 has at least a 10 percent service-connected disability and who is a
24 ~~resident of~~ *domiciled in* the State of California.

25 (g) (1) “Disabled veteran business enterprise” means a
26 business certified by the administering agency as meeting all of the
27 following requirements:

28 (A) It is a sole proprietorship at least 51 percent owned by one
29 or more disabled veterans or, in the case of a publicly owned
30 business, at least 51 percent of its stock is owned by one or more
31 disabled veterans; a subsidiary which is wholly owned by a parent
32 corporation, but only if at least 51 percent of the voting stock of
33 the parent corporation is owned by one or more disabled veterans;
34 or a joint venture in which at least 51 percent of the joint venture’s
35 management and control and earnings are held by one or more
36 disabled veterans.

37 (B) The management and control of the daily business
38 operations are by one or more disabled veterans. The disabled
39 veterans who exercise management and control are not required to
40 be the same disabled veterans as the owners of the business.

1 (C) It is a sole proprietorship, corporation, or partnership with
2 its home office located in the United States, which is not a branch
3 or subsidiary of a foreign corporation, foreign firm, or other
4 foreign-based business.

5 (2) Notwithstanding paragraph (1), after the death or the
6 certification of a permanent medical disability of a disabled
7 veteran who is a majority owner of a business that qualified as a
8 disabled veteran business enterprise prior to that death or
9 certification of a permanent medical disability, and solely for
10 purposes of any contract entered into before that death or
11 certification, that business shall be deemed to be a disabled veteran
12 business enterprise for a period not to exceed three years after the
13 date of that death or certification of a permanent medical disability,
14 if the business is inherited or controlled by the spouse or child of
15 that majority owner, or by both of those persons.

16 (h) “Foreign corporation,” “foreign firm,” and
17 “foreign-based business” means a business entity that is
18 incorporated or has its principal headquarters located outside the
19 United States of America.

20 (i) “Goal” means a numerically expressed objective that
21 awarding departments and contractors are required to make efforts
22 to achieve.

23 (j) “Management and control” means effective and
24 demonstrable management of the business entity.

25 (k) “Professional bond services” include services as financial
26 advisers, bond counsel, underwriters in negotiated transactions,
27 underwriter’s counsel, financial printers, feasibility consultants,
28 and other professional services related to the issuance and sale of
29 bonds.

30 SEC. 7. Section 999.6 of the Military and Veterans Code is
31 amended to read:

32 999.6. In implementing this article, the awarding department
33 shall utilize existing resources such as the Office of Small Business
34 and Disabled Veteran Business Enterprise Services, the
35 Department of Veterans Affairs, the federal Department of
36 Veterans Affairs, and the Small Business Administration.

37 SEC. 8. Section 999.9 of the Military and Veterans Code is
38 amended to read:

39 999.9. (a) It shall be unlawful for a person to:

1 (1) Knowingly and with intent to defraud, fraudulently obtain,
2 retain, attempt to obtain or retain, or aid another in fraudulently
3 obtaining or retaining or attempting to obtain or retain,
4 certification as a disabled veteran business enterprise for the
5 purpose of this article.

6 (2) Willfully and knowingly make a false statement with the
7 intent to defraud, whether by affidavit, report, or other
8 representation, to a state official or employee for the purpose of
9 influencing the certification or denial of certification of any entity
10 as a disabled veteran business enterprise.

11 (3) Willfully and knowingly obstruct, impede, or attempt to
12 obstruct or impede, any state official or employee who is
13 investigating the qualifications of a business entity which has
14 requested certification as a disabled veteran business enterprise.

15 (4) Knowingly and with intent to defraud, fraudulently obtain,
16 attempt to obtain, or aid another person in fraudulently obtaining
17 or attempting to obtain, public moneys to which the person is not
18 entitled under this article.

19 (5) Knowingly and with intent to defraud, fraudulently
20 represent participation of a disabled veteran business enterprise in
21 order to obtain or retain a bid preference or a state contract.

22 (6) Knowingly and with intent to defraud, fraudulently
23 represent that a commercially useful function is being performed
24 by a disabled veteran business enterprise in order to obtain or
25 retain a bid preference or a state contract.

26 (b) Any person who violates any of the provisions of
27 subdivision (a) shall be liable for a civil penalty not to exceed five
28 thousand dollars (\$5,000) for the first violation, and a civil penalty
29 not to exceed twenty thousand dollars (\$20,000) for each
30 additional or subsequent violation.

31 (c) Any person who violates subdivision (a) shall, if certified
32 as a disabled veteran business enterprise, have the business'
33 certification revoked for a period of not more than one year, and
34 shall, in addition to the penalties provided for in subdivision (b),
35 be suspended from bidding on, or participating as a contractor, a
36 subcontractor, or a supplier in, any state contract or project for a
37 ~~period of not less than 30 days nor more than one year. However,~~
38 ~~period of not less than three months nor more than 24 months.~~
39 ~~However,~~ for an additional or subsequent violation the period of
40 certification revocation or suspension shall be extended for a

1 period of up to three years. The certification revocation shall apply
2 to the principals of the business and any subsequent businesses
3 formed by those principals. Any business or person who fails to
4 satisfy the penalties imposed pursuant to subdivisions (b) and (c)
5 shall be prohibited from further contracting with the state until the
6 penalties are satisfied.

7 (d) The awarding department shall report all alleged violations
8 of this section to the Office of Small Business and Disabled
9 Veteran Business Enterprise Services. The office shall
10 subsequently report all alleged violations to the Attorney General
11 who shall determine whether to bring a civil action against any
12 person or firm for violation of this section.

13 (e) The office shall monitor the status of all reported violations
14 and shall maintain and make available to all state departments a
15 central listing of all firms and persons who have been determined
16 to have committed violations resulting in suspension.

17 (f) No awarding department shall enter into any contract with
18 any person suspended for violating this section during the period
19 of the person's suspension. No awarding department shall award
20 a contract to any contractor utilizing the services of any person as
21 a subcontractor suspended for violating this section during the
22 period of the person's suspension.

23 (g) The awarding department shall check the central listing
24 provided by the office to verify that the person or contractor to
25 whom the contract is being awarded, or any person being utilized
26 as a subcontractor or supplier by that person or contractor, is not
27 under suspension for violating this section.

